

REMARKS

Reconsideration of the application as amended is respectfully requested.

The examiner respectfully rejected Claim 7 under 35 U.S.C. § 112, second paragraph, for lacking sufficient antecedent basis for “said base member”. Claim 7 has been amended to depend from Claim 2, thereby providing proper antecedent basis for “said base member”.

Claims 1 and 7 were respectfully rejected under 35 U.S.C. § 102(b) as being anticipated by Fox.

In undertaking to determine whether one reference anticipates another under 35 U.S.C. § 102(b), a primary tenet is that the reference must teach every element of the claim. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). “The identical invention must be shown in as complete detail as is contained in the . . . claim.” Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

However, Fox does not incorporate an “athletic bag” (Claim 1), nor a “bag mounting platform” to serve as a base upon which a base of said athletic bag is permanently attached. (Claim 7).

Therefore, in light of the differences between Fox and the present invention, the examiner’s rejection of Claims 1 and 7 under 35 U.S.C. § 102(b) as being anticipated by Fox is inappropriate.

Further, Claims 1, 2, 5 and 7 were rejected under 35 U.S.C. § 102(b) as being anticipated

by Server Perez. However, Server Perez, disclosing a foldable cart for shopping, fails to claim or disclose “an athletic bag” (Claim 1), “a hollow, tubular base member forming a U-shape which serves as a base upon which said athletic bag can be supported” (Claim 2), a “tubular handle formed of a U-shape and pivotally mounted to inside external circumferential sidewalls of said main frame at said anterior end thereof” (Claim 5), nor “said bottom end of said athletic bag rests against said base member such as to form a bag mounting platform to serve as a base upon which a base of said athletic bag is permanently attached.” (Claim 7). Further differences exist, including the short height that does not allow for carrying baseball bats properly, and telescoping folding handles that accommodate various sized bats.

Therefore, in light of the numerous differences between Fox and the present invention, the examiner’s rejection of Claims 1, 2, 5 and 7 under 35 U.S.C. § 102(b) as being anticipated by Server Perez is inappropriate.

Further, Claims 1 and 6 were rejected under 35 U.S.C. § 102(b) as being anticipated by Brown, and at the same time anticipated by Allen. However, Brown fails to claim or disclose “an athletic bag” (Claim 1), nor “a weatherproof, flexible, heavy fabric”(Claim 6). Also, Allen fails to *claim* a two-wheeled cart. In contrast, Allen merely *claims wheel members* in Claim 11, thus failing to claim specifically a *two-wheeled cart*.

In addition, unlike the present invention, Allen fails to *claim* an athletic bag incorporating a *cart*.

Furthermore, in contrast to the present invention, Allen fails to *claim* an athletic bag fabricated of a *weatherproof, flexible, heavy fabric*. Allen, rather, claims a *common fabric*, a

fabric enclosure, and a *fabric enclosure member*, as stated in claims 7, 8, and 13 respectively.

Therefore, in light of the noted differences between the present invention in comparison to Brown and Allen, the examiner's rejection of Claims 1 and 6 under 35 U.S.C. § 102(b) as being anticipated by either Brown or Allen is inappropriate.

Further, Claim 3 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Server Perez in view of Weldon, and rejected claims 2, 3 and 5 under 35 U.S.C. § 103(a) as being unpatentable over Brown in view of Weldon, and rejected claim 4 under 35 U.S.C. § 103(a) as being unpatentable over Server Perez in view of Green and at the same time over Allen in view of Green and at the same time Brown in view of Weldon, and rejected claim 8 under 35 U.S.C. § 103(a) as being unpatentable over Server Perez in view of Inge and at the same time over Allen in view of Inge and Brown in view of Weldon, and further in view of Inge.

The differences with respect to Allen have been stated above.

Weldon teaches a portable cooler caddy which includes a cup holder panel.

However, unlike the present invention, Weldon fails to teach an athletic bag, and hence also fails to teach an athletic bag with a bottom end permanently attached to the base member of the main frame.

In addition, unlike the present invention, Weldon fails to teach an inflating pump attached to an upright member of the main frame.

Examiner argues it would have been obvious to one of ordinary skill in the art at the time the invention was made to attach a hand-operated inflating pump to the main frame.

However, in light of the failure by each of the aforementioned references to disclose the

attachment of such inflating pump to an athletic carrier as taught by the present invention, the attachment of such component is non-obvious.

Green teaches a back carried apparatus for storing and carrying golf balls, in combination with a wand to pick up golf balls while walking along. It specifically claims a pair of parallelly spaced frames having a spring urging means for clamping the frames around the golf balls. No cylinder is included, among other very numerous differences with the present invention.

Therefore, neither Server Perez nor Weldon, in combination or apart, disclose or teach every element as required, thus Claim 3 is considered allowable. Neither Brown nor Weldon, in combination or apart, disclose or teach every element as required, thus Claims 2, 3 and 5 are considered allowable. Neither Server Perez nor Green, in combination or apart, disclose or teach every element as required, and neither Brown nor Weldon, in combination or apart, disclose or teach every element as required, thus Claim 4 is considered allowable. Neither Server Perez nor Inge, and neither Allen nor Inge, and Brown, Weldon nor Inge, in combination or apart, disclose or teach every element as required, thus Claim 8 is considered allowable.

However, based upon the above arguments, it is felt that the differences between the present invention and all of these references are such that rejection based upon 35 U.S.C. § 103(a), in addition to any other art, relevant or not, is also inappropriate.

To reiterate the arguments made in response to previous rejections, it is felt that the differences between the present invention and all of these references are such that rejection based upon 35 U.S.C. § 103, in addition to any other art, relevant or not, is also inappropriate. However, by way of additional argument application wishes to point out that it is well

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established at law that for a proper *prima facie* rejection of a claimed invention based upon obviousness under 35 U.S.C. § 103, the cited references must teach every element of the claimed invention. Further, if a combination is cited in support of a rejection, there must be some affirmative teaching in the prior art to make the proposed combination.

Applicant feels that, at best, the examiner has cited a number of references variously containing some of the limitations in applicants claim; however, these references and the limitations for which they were cited are combined piecemeal, without any suggestion or motivation for their combination and without regard to the purpose of the applicant's invention. This is similar to the scenario in In re Blammer, Civ. App. No. 93-1108, slip op. At 3-4 (Fed. Cir. Sept. 21, 1993)(unpublished), wherein the examiner in that case rejected an application as obvious in light of twelve references. The Board of Appeals in that matter concluded that the invention would have been obvious in light of only four of the references, which was also overturn by the Federal Circuit.

Therefore, in view of foregoing amendments and clarifications, the applicant submits that allowance of the present application and all remaining claims, as amended, is in order and is requested.

Respectfully submitted,
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